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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2881/2024

SAJAN AHMED BORBHUIYA
S/O ABUL SALAM BORBHUIYA
R/O VILL- KASHIPUR, PART-II
P.S. SILCHAR, DIST. CACHAR,
STATE- ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED, U U KHAN, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

04.12.2024

1. Heard Mr. M. A. Choudhury, learned counsel for the petitioner Sajan Ahmed Borbhuiya.

2. The petitioner has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars since 19.03.2022 in connection with Special NDPS Case No. 47/2022 arising out of Karimganj P.S. Case No. 190/2022 under Sections 22(C)/25/29 of the NDPS Act.
3. Heard Ms. N. Das, learned Additional Public Prosecutor, Assam for the respondent State.
4. The learned counsel for the petitioner has submitted that the petitioner has been behind bars since 19.03.2022, and only 3 out of 11 witnesses have been examined so far. 11 witnesses have been enlisted in the Charge-sheet as cited witnesses and only 3 of them have been examined so far. The possibility of disposal of this case appears to be remote and the petitioner's right to personal liberty will be infringed if he is not granted bail.
5. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in **Mamata Begum @ Bewa @ Beguni @ Mamata Bibi Vs The State of West Bengal**, wherein vide order dated 29.01.2024 in connection with **Criminal No. 68/2024**, it was observed that:

“ The petitioner is charged with offences punishable under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act 1985. She is in custody for a period of two years. Though the trial has progressed, only five witnesses out of ten have been examined as of date.

Bearing in mind the above circumstances and conscious as the Court is of the provisions of Section 37, we are of the view that it would be appropriate to grant bail to protect the personal liberty of the petitioner who faces an interminably

delayed custodial period. Consequently, we order and direct that the petitioner be released on bail, subject to such terms and conditions as may be imposed by the Special Court under the NDPS Act in connection with Case No 1370 of 2021 dated 26 November 2021 (NDPS Case No 264 of 2021). The petitioner shall, however, cooperate in all respects in the early conclusion of the trial without seeking adjournment. "

The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Zakirul Islam @Md Zakirul Islam @Zakir Vs. The State of Assam***, wherein vide order dated 15.07.2024, in connection with ***SLP Criminal No. 3632/2024***, it was observed that:

" The petitioner is an accused in NDPS Case No.320 of 2022 and presently he is in jail. Since the trial has not yet been completed and some witnesses are yet to be examined and, moreover, the petitioner has already undergone more than one and half years in jail.

Considering the facts and circumstances of the case, we are of the opinion that a case of bail is made out for the petitioner and therefore, the prayer of the petitioner is allowed.

Accordingly, the petitioner Zakirul Islam Md Zakirul Islam @Zakir is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court. "

6. Heard Ms. N. Das, learned Additional Public Prosecutor, Assam for the respondent State, who has raised serious objection stating that the decisions relied upon by the learned counsel for the petitioner are relating to bail applications and thus do not set a precedent. In offences of serious nature, the length of detention cannot be a ground for granting bail. In this case 10,000 yaba tablets have been recovered from the petitioner and thus bail in such

cases is restricted by the rigours of Section 37 of the NDPS Act.

7. I have considered the submissions at the Bar with circumspection.

8. Indeed the decisions relied upon by the petitioner is not rationes decidendi. However, the petitioner has been behind bars for 2years 8 months. Only 3 out of 11 witnesses have been examined so far. Indeed the trial has been procrastinated and thus the right to personal liberty outweighs the rigours of Section 37 of the NDPS Act.

9. Considering the fact that the trial has been dragging on with laden feet and considering the factum that 8 more witnesses are yet to be examined, I deem it appropriate to grant bail to the petitioner.

10. Considering all aspects, the petitioner is enlarged on bail of Rs. 1 lac with a suitable surety of like amount to the satisfaction of the Learned Trial Court under the conditions that :

- (i) The petitioner shall cooperate with the trial and not try to influence the witnesses, and
- (ii) The petitioner shall not leave the jurisdiction of the Court without prior permission till completion of trial.

11. On breach of any of the bail conditions, the learned Court is at liberty to cancel the bail granted to the petitioner.

12. In terms of the above observation, bail application stands disposed of.

JUDGE

Comparing Assistant